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December 20, 2011

December 21, 2011
The Court will grant one further extension to
Friday February 3, 2012. There will be no further extensions.
Plaintiff is not engaged in prosecution of its action, defendant
should move to dismiss for lack of prosecution
so ordered

USDC SDNY
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DOC #: _____
DATE FILED: 21 DEC 2011

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BY FACSIMILE

Hon. Paul A. Crotty, U.S.D.J.
United States District Court
Southern District of New York
500 Pearl Street
Chambers 735
Courtroom 20-C
New York, New York 10007

Facsimile No.: (212) 805-6304

Orbital Publishing Group, Inc. v. Bank of America, N.A.
Index No.: 11 Civ. 3065

Dear Judge Crotty:

We represent Bank of America, N.A. ("BANA") in the above referenced matter and write to request an additional extension of BANA's time to file a third-party action.

Based on the "so ordered" stipulation dated July 27, 2011, BANA's time expires on December 26, 2011. For the Court's convenience, a copy of the "so ordered" stipulation is attached.

BANA seeks this second extension of time for the same reasons it sought and obtained plaintiff's consent to the first extension – to preserve its right to bring a third-party action should the facts give rise to a third-party claim against presently unknown non-parties. The difficulty is plaintiff has not pursued this action, and appears to have abandoned its claims. However, until plaintiff's intentions become clear, BANA seeks to extend its time simply to preserve the status quo.

By way of background, plaintiff commenced this action in May 2011, alleging that BANA wrongfully deprived plaintiff of access to the funds held in two business accounts. Upon an emergency order to show cause, plaintiff sought an

MEMO ENDORSED

ZEICHNER ELLMAN & KRAUSE LLP

Hon. Paul A. Crotty, U.S.D.J.

December 20, 2011

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injunction directing BANA to release the sum of approximately \$400,000. that was being held in the accounts. Your Honor granted plaintiff's motion and directed BANA to release the balance of the accounts, except for approximately \$40,000 that was deposited into Court in lieu of an injunction bond.

Since disbursing the account proceeds and receiving plaintiff's counsel's consent to the prior "so ordered" stipulation, we have not heard from plaintiff's counsel. We have sent counsel written inquiries over the last several months. However, our inquiries, along with BANA's counterclaims, have all gone unanswered.

In accordance with Your Honor's Rules, on December 19, 2011, we requested counsel's consent to further extend BANA's time to file a third-party complaint. However, similar to our other inquiries, plaintiff's counsel has failed to respond.

The requested extension does not affect any other scheduled dates.

In light of the foregoing, we respectfully request that Your Honor endorse this letter to extend BANA's time to commence a third-party action to April 27, 2012.

Respectfully submitted,



Tracee E. Davis

TED:bs

Enclosure

cc: David P. Lennon, Esq. (by facsimile w/ attachment)

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ORBITAL PUBLISHING GROUP, INC..

Plaintiff,

-against-

BANK OF AMERICA, N.A.,

Defendant.

C. Acty 1.5

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 27 JUL 2011

11 Civ. 3065 (PAC)

STIPULATION AND ORDER
EXTENDING DEFENDANT'S
TIME TO FILE A THIRD-
PARTY COMPLAINT

IT IS HEREBY STIPULATED AND AGREED that Defendant's time to file a third-party complaint shall be extended from July 29, 2011 to December 26, 2011.

This is the first request for an extension of this time.

IT IS FURTHER STIPULATED AND AGREED that this Stipulation may be signed in counterparts and that facsimile copies shall be deemed originals.

Dated: New York, New York
July 26, 2011

LENNON & KLEIN, P.C.

By:

David P. Lennon, Esq.
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ZEICHNER ELLMAN & KRAUSE LLP

By:

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SO ORDERED:

27 JUL 2011

Ramsey

U.S.D.J.

JM

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